NO. 80-1469

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1980

JOSEPH S. CUTTITTA,

Petitioner,

vs.

ROMELINA GENE CUTTITTA,

Respondent.

OPPOSITION BRIEF TO PETITION FOR A WRIT OF CERTIORARI

/FRANKLIN GEERDES
659 Third Avenue, Suite C
Chula Vista, California 92010
Telephone: (714) 426-7550

Of Counsel:

BOWMAN AND GEERDES

NO. 80-1469

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1980

JOSEPH S. CUTTITTA,

Petitioner,

vs.

ROMELINA GENE CUTTITTA,

Respondent.

OPPOSITION BRIEF TO PETITION FOR A WRIT OF CERTIORARI

Respondent respectfully prays that the court not grant a Writ of Certiorari to review the Final Judgment of the Supreme Court of the State of California.

STATEMENT OF FACTS

The parties were married on November 2, 1963. On August 23, 1978, Romelina Gene Cuttitta filed a Petition for Dissolution of Marriage from Joseph S. Cuttitta. At that time the parties had been married 14 years 6 months 15 days. Listed as a community property asset in the Petition was: "7. Respondent's military retirement."

At the time the Petition for Dissolution was filed, Appellant was on active duty as a Lt. Commander in the U. S. Navy but was being transferred to the temporary disability retired list, effective September 1, 1978. Appellant entered the military June 27, 1952. Appellant's Response to Petition for Dissolution stated:

> "Respondent does not feel there is any community property subject to disposition by the Court in this proceeding, but if there eventually appears to be property subject to disposition of this Court, respondent will seek permission to amend his Response to include same at that time."

In 1974 the parties moved to California residing in Long Beach, San Pedro, Alameda and finally to San Diego in 1976.

At the time of trial the Court found that:

> "Respondent entered into military service on June 27, 1952. He retired on September 1, 1978, and elected a disability retirement. The length of marriage is 175 months. The length of respondent's service is 315 months. The community share of the military pension of respondent, referred to as 'retired pay', is 55.6%. Petitioner has a property right to 27.8% of the gross retirement monthly. "Gross retirement" means that sum which respondent would receive as retired pay in

> absence of disability. Petitioner should share in any increases except enlargements related to respondent's disability. Respondent presently has a disability rating of 30%, which is on appeal.
>
> "The gross 'retired pay' each month is $1,322.89. Petitioner's share is $367.76. Respondent's share is $955.13..."

The above distribution of the military retirement was incorporated in the Judgment After Bifurcation.

STATEMENT OF THE CASE

This is an appeal from a Judgment After Bifurcation and entry of Judgment for Dissolution of Marriage.

Petition for Dissolution of Marriage was filed on August 23, 1978.

An Interlocutory Judgment of Dissolution of Marriage was then entered on March 23, 1979. At this time proceedings were bifurcated and the court reserved jurisdiction to hear and decide all other issues raised by the Petition and Response filed in this matter.

Final Judgment of Dissolution of Marriage was entered June 1, 1979. Trial in this matter came on regularly for hearing, and trial was had on August 14, 15 and 16, 1979, before the Honorable Douglas R. Woodworth, Judge of the Superior Court in and for the County of San Diego, sitting without jury.

Findings of Fact and Conclusions of Law were entered on November 7, 1979. Judgment After Bifurcation was then entered on November 7, 1979, and was duly entered in Judgment Book 1252 at Page 108, on the same day.

Appellant filed Notice of Appeal on November 7, 1979. Appellant's appeal brief was filed on July 8, 1980.

ARGUMENT

I

THE DECISION OF THE STATE COURT BELOW INVOLVES THE SAME QUESTION OF LAW AS BEING CONSIDERED IN THE McCARTY CASE ALREADY UNDER CONSIDERATION BY THIS COURT SUCH THAT GRANTING A WRIT OF CERTIORARI WOULD RESULT IN DUPLICATION.

To grant a Writ of Certiorari in this case would result in duplication of effort by the Court and Counsel since In Re Marriage of McCarty (1980) U. S. 80-5, is under consideration at this time. The McCarty case, as this case, involves the issue of military retirement as part of division of community and quasi-community property under California law.

CONCLUSION

Respondent respectfully contends a Writ of Certiorari not issue.

Respectfully submitted,

BOWMAN AND GEERDES

By: _____
FRANKLIN GEERDES

Attorneys for Respondent
Romelina Gene Cuttitta

GARRY J. BOWMAN
BOWMAN AND GEERDES
659 Third Avenue, Suite C
Chula Vista, California 92010
Telephone: 426-7550

Attorney for Respondent

SUPREME COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

JOSEPH S. CUTTITTA,

Petitioner,

-vs-

ROMELINA GENE CUTTITTA,

Respondent.

NO. 80-1469

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND AFFIDAVIT IN SUPPORT THEREOF

The Respondent moves the Court as follows:

For leave to proceed in forma pauperis in this appeal based upon the affidavit filed herewith allowing the filing of briefs and documents pursuant to Rule 46 of this Court.

Dated: May 19, 1981

Garry J. Bowman
GARRY J. BOWMAN
Attorney for Respondent

COMMONWEALTH OF VIRGINIA)
)
COUNTY OF_____).

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, ROMELINA GENE CUTTITTA, declare as follows:

That I have no funds whatsoever to pay for costs of this appeal and have not paid any attorney fees regarding such appeal

LAW OFFICES
BOWMAN AND GEERDES
659 THIRD AVENUE
SUITE C
CHULA VISTA,
CALIFORNIA 92010
TELEPHONE 426-7550

and would not be able to proceed herein unless leave is permitted to proceed in forma pauperis.

Executed on May 28, 1981 at Day, Virginia.

Romelina Gene Cuttitta
ROMELINA GENE CUTTITTA
Respondent

Subscribed and Sworn to before me this 28 day of May, 1981.

Notary Public in and for 10-19-84

LAW OFFICES
BOWMAN AND GEERDES
859 THIRD AVENUE
SUITE C
CHULA VISTA,
CALIFORNIA 92010
TELEPHONE 426-7880